

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

EK VENTURES I, LLC; DAVID L.  
TAYLOR; DAVID L. TAYLOR AND  
VIRGINIA L. TAYLOR as TRUSTEES  
FOR THE TAYLOR FAMILY  
REVOCABLE TRUST; and  
FLEXTRONICS INTERNATIONAL  
LTD.,

Plaintiffs,

v.

JAMES R. BARTLETT and Z.B.R.  
PUBLICATIONS, INC.,

Defendants.

No: 1:03-CV-12506-WGY

**DEFENDANT Z.B.R. PUBLICATIONS INC.'S MOTION TO DISMISS THE FIRST  
AMENDED COMPLAINT**

Pursuant to Fed. R. Civ. P. 12(b)(6), Defendant Z.B.R. Publications, Inc. ("ZBR") moves to dismiss Plaintiffs' Amended Complaint. As grounds for its motion, ZBR states:

1. Pursuant to a contractual limitations provision, all representations and warranties under the Agreement expired on September 30, 2001.

2. While ZBR is a party to the Agreement, it is not liable for any breach, under the Agreement's express terms. The Agreement provides that the Selling Shareholders (including Plaintiffs), on the one hand, and defendant James R. Bartlett and GlobalWare Solutions, Inc. on the other, will indemnify each other for breach of the Agreement. It does *not* provide that ZBR will indemnify anyone, or that ZBR will be indemnified, for breaches of the Agreement.

3. Plaintiffs' claim against ZBR for negligent misrepresentation is barred by the applicable three-year statute of limitations set forth in M.G.L. c. 260, § 2A.

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4. Plaintiffs cannot contend that the statute of limitations is tolled due to fraudulent concealment because, among other things, they are all "insiders." Plaintiff David L. Taylor was made a member of GlobalWare's Board of Directors in February 29, 2000. All of the Plaintiffs have been GlobalWare shareholders for nearly four years. Moreover, Plaintiffs failed to make any allegations of fraud, much less allege fraudulent concealment with sufficient particularity pursuant to Fed. R. Civ. P. 9(b).

5. Plaintiffs' unjust enrichment claim cannot lie, because the relationship among the parties is governed by the Agreement.

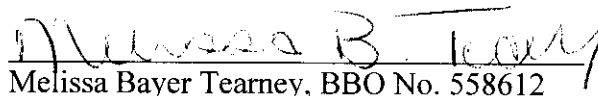
WHEREFORE, ZBR requests that this Court grant its Motion to Dismiss, and grant all further relief as it deems just and proper.

**REQUEST FOR ORAL ARGUMENT**

ZBR requests an oral argument because it believes such argument will assist the Court in resolving the issues placed before it by this Motion.

Z.B.R. PUBLICATIONS, INC.

By their attorneys,



Melissa Bayer Tearney, BBO No. 558612

David Ryan, BBO No. 644037

Stephen M. LaRose, BBO No. 654507

NIXON PEABODY LLP

101 Federal Street

Boston, MA 02110

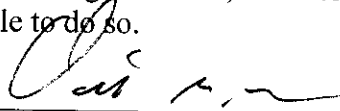
(617) 345-1000

Dated: January 26, 2004

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**CERTIFICATION OF COUNSEL PURSUANT TO LOCAL RULE 7.1**

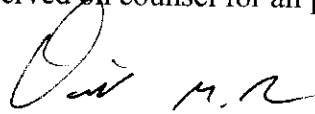
I certify that on January 23, 2004, I conferred with Douglas Roach, counsel for Plaintiffs, to resolve the issues raised by this Motion, but was unable to do so.



David M. Ryan

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was served on counsel for all parties first class mail on January 26, 2004.



David M. Ryan



**NIXON PEABODY LLP**

ATTORNEYS AT LAW

101 Federal Street  
Boston, Massachusetts 02110-1832

(617) 345-1000

Fax: (617) 345-1300

David M. Ryan

Direct Dial: (617) 345-6060

E-Mail: dryan@nixonpeabody.com

January 26, 2004

**VIA HAND DELIVERY**

Civil Clerk's Office  
United States District Court  
for the District of Massachusetts  
John Joseph Moakley U.S. Courthouse  
One Courthouse Way  
Boston, MA 02210

RE: EK Ventures I, LLC, et al. v. James R. Bartlett, et al.  
Civil Action No. 1:03-CV-12506-WGY

Dear Sir or Madam:

I have enclosed for filing the following documents:

1. Defendant Z.B.R. Publications, Inc.'s Motion to Dismiss the First Amended Complaint;
2. Memorandum of Law in Support of Defendant Z.B.R. Publications, Inc.'s Motion to Dismiss the First Amended Complaint; and
3. Affidavit of Melissa Bayer Tearney.

Please time-stamp the enclosed copy of this letter and return it to the awaiting messenger.

Very truly yours,

David M. Ryan

DMR:sjk

Enclosures

cc: Thomas S. Fitzpatrick, Esq.  
Jerold T. Everard, Esq.  
Melissa Bayer Tearney, Esq.